



FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

DEC 27 2017

RICK WARREN
COURT CLERK

JOSHUA A. EDWARDS, AS GUARDIAN AD
LITEM AND NEXT FRIEND OF J.D.L., AN
INCAPACITATED PERSON,

Plaintiff,

vs.

Case No. CJ-2016-3377

ROLLING HILLS HOSPITAL, LLC, AN
OKLAHOMA LIMITED LIABILITY
COMPANY; ARCADIA HEALTHCARE
COMPANY, INC., A DELAWARE
CORPORATION; THE STATE OF OKLAHOMA,
ex rel., OKLAHOMA DEPARTMENT OF
HUMAN SERVICES,

Defendants.

SECOND AMENDED PETITION

COMES NOW Plaintiff, Joshua A. Edwards, as Guardian Ad Litem and Next Friend of J.D.L. an incapacitated adult person, by and through his counsel, William J. Ervin, Jr., and amends his causes of action against Defendants Rolling Hills Hospital, LLC ("Rolling Hills"), Arcadia Healthcare Company, Inc. (Arcadia), and the State of Oklahoma, *ex rel.*, Oklahoma Department of Human Services ("DHS"), as follows:

JURISDICTION AND VENUE

1) J.D.L. was at the time of the actions complained of herein, a disabled minor child, residing in the State of Oklahoma, in the custody of the Oklahoma Department of Human Services.

2) J.D.L. has been adjudicated an incapacitated adult person in Pontotoc County District Court Case No. PG-17-01, and is currently under guardianship.

3) Joshua A. Edwards is Guardian Ad Litem for J.D.L., duly appointed by the Court pursuant to 10A O.S. § 1-8-108, in Pontotoc County District Court Case No. JFJ-05-81, and reappointed in Pontotoc County District Court Case No. PG-17-01.

4) Defendant Rolling Hills, is an Oklahoma Limited Liability Company, with its principal place of business in Pontotoc County, Oklahoma, but is subject to service or process in Oklahoma County, Oklahoma.

5) Defendant Arcadia Healthcare Company, Inc. is the sole member of Defendant Rolling Hills, L.L.C., and at all times relevant to these proceedings Defendant Rolling Hills was under the exclusive direction and control of Defendant Arcadia.

6) Defendant Arcadia is a Delaware Corporation, with its principal place of business in the State of Tennessee.

7) Defendant DHS is an agency of the State of Oklahoma with its principal place of business is in Oklahoma County, Oklahoma, where service may be had upon said Defendant; as a result, this Court maintains jurisdiction over the subject matter and persons involved in this litigation and venue is proper before this Court.

8) Defendant DHS received notice of Plaintiff's claim, pursuant to the Oklahoma Governmental Tort Claims Act, 51 O.S. §151 *et seq.*, on February 11, 2016. Defendant DHS has now denied Plaintiff's Claim by operation of Oklahoma Law.

9) This Court has jurisdiction over the parties herein, and venue is proper.

OPERATIVE FACTS

10) In September 2005, DHS took custody of J.D.L. from his parents, against parental wishes and in an involuntary manner.

11) DHS subsequently terminated the parental rights of J.D.L.'s father and mother.

12) Over the next nine (9) years, DHS placed J.D.L. in approximately forty-three (43) separate facilities and/or foster homes.

13) On June 9, 2014 J.D.L. was placed at the Cypress Adolescent Group Home in Ada, Oklahoma.

14) The Cypress Adolescent Group Home was owned and operated by Defendants Rolling Hills and Arcadia.

15) While a resident of Cypress Adolescent Group Home, J.D.L. was in the exclusive legal custody and control of Defendant DHS, and under the daily supervision, care and control of Defendants Rolling Hills and Arcadia.

16) In October 2014, Defendants Rolling Hills and Arcadia denied J.D.L. necessary medical care, as a result he required emergency surgery and hospitalization.

17) Between November 1, 2014 and July 2015, J.D.L. was, on multiple occasions, physically and sexually assaulted by [REDACTED], a resident of the Cypress Adolescent Group Home.

18) Prior to the time J.D.L. was assaulted, Defendants Rolling Hills and Arcadia had actual knowledge of other sexual assaults on residents by [REDACTED] and others.

19) After receiving reports of sexual assault, Defendants Rolling Hills and Arcadia failed to report instances of sexual assault to law enforcement authorities.

20) That after receiving reports of sexual assaults by [REDACTED], Defendants Rolling Hills and Arcadia assigned [REDACTED] to be J.D.L.'s roommate.

21) After receiving additional reports of sexual assault, Defendants Rolling Hills and Arcadia ordered its employees to remove security cameras and to destroy video surveillance footage.

22) Defendants Rolling Hills and Arcadia also ejected/removed from the premises a DHS caseworker who was making inquiry into the reported assaults.

23) After multiple additional reported sexual assaults, to Defendant Rolling Hills, the City of Ada Police Department, CASA, and to the District Court of Pontotoc County, Defendant DHS undertook an investigation, which resulted in the removal of all DHS children from the Cypress Adolescent Group Home in July 2015.

24) That the Defendants herein had a duty to protect J.D.L. from known or reasonably foreseeable harms and to provide for his health, welfare, safety, while J.D.L. was in their care and custody.

25) J.D.L.'s injuries and damages were received while in DHS custody, and, more particularly, in the care and physical custody of Defendants Rolling Hills and Arcadia.

26) Pursuant to the Orders of the Court appointing him guardian ad litem, Plaintiff claims, on behalf J.D.L., all actual and exemplary damages allowed by law.

(Negligence: Defendants Rolling Hills and Arcadia)

27) Plaintiffs hereby incorporate paragraphs 1-26 above.

28) Defendants, Rolling Hills and Arcadia owned and operated the Cypress Adolescent Group Home where the acts which proximately caused Plaintiffs' injuries took place and had a right of control over the property.

29) Defendants Rolling Hills and Arcadia had a duty to exercise ordinary care to protect the minor children at the facility from the tortious conduct of persons on the premises, including, but not limited to, residents, visitors, and/or its own employees.

30) Defendants Rolling Hills and Arcadia are liable for the acts and omissions of their employees, under the doctrine of *respondeat superior*.

31) Defendants Rolling Hills and Arcadia had actual, imputed and/or constructive knowledge of the risk posed by and the tortious conduct of [REDACTED] and others, to J.D.L. as a resident for whom Defendants Rolling Hills and Arcadia were responsible.

32) The occurrences made the basis of this suit, and the resulting injuries and damages, were proximately caused by the negligent or intentional conduct of Defendants Rolling Hills and Arcadia. These Defendants' negligence includes, but is not limited to, the following particulars, each of which, taken separately or collectively, constitute a direct and proximate cause of the injuries and damages herein alleged:

- a. Failing to provide J.D.L. a safe environment;
- b. Failing to implement procedures which would protect J.D.L.;
- c. Failing to properly and adequately monitor [REDACTED] while interacting with J.D.L. and the environment within which J.D.L. and [REDACTED] interacted, or to remove [REDACTED] from that environment;
- d. Failing to exercise ordinary care to protect J.D.L. from a known danger, by both failing to adequately warn of the known risk of sexual assault, failing to make the conditions reasonably safe and by assigning [REDACTED] as J.D.L.'s roommate;
- e. Failing to adequately safe guard J.D.L. from an incident or environment that Defendants Rolling Hills and Arcadia knew or should have known was dangerous;
- f. Failing to provide adequate security for J.D.L., as a resident of the Defendants' facility;

33) Each of these acts and omissions, singularly or in combination with others, constituted negligence, which proximately caused the occurrences made the basis of this action and Plaintiffs' injuries. Furthermore, Defendants Rolling Hills and Arcadia are jointly and severally liable for the tortious conduct of [REDACTED].

34) As a direct result of Defendants Rolling Hills and Arcadia's acts and omissions J.D.L. was frightened, humiliated, embarrassed, confused, distraught and suffered mental

anguish, emotional distress and psychological injury that interferes with his ability to carry out the day-to-day responsibilities of life, his enjoyment of life and the proper psychological and emotional development. Plaintiff herein claims the following items of specific damages:

- a. Reasonable and necessary medical expenses reasonably likely to be incurred in the future;
- b. Past physical pain and suffering;
- c. Mental anguish in the past;
- d. Mental anguish in the future;
- h. Pre-judgment interest at the highest rate allowed by law; and
- i. Post-judgment interest at the highest rate allowed by law.

35) The wrongs done by Defendants Rolling Hills and Arcadia were aggravated by malice and reckless disregard for which the law allows the imposition of exemplary damages. The conduct of these Defendants, created an unnecessary and unreasonable risk of serious harm to J.D.L. Defendants Rolling Hills and Arcadia were actually, subjectively aware of the risk involved, but nevertheless proceeded with conscious indifference and/or reckless disregard to the rights, safety, or welfare of J.D.L.

36) Following the multiple reports of sexual assault by [REDACTED], Defendants Rolling Hills and Arcadia undertook intentional and deliberate actions to destroy evidence of such assaults, and to make the subject facility less safe, in an attempt to hide the truth and thereby increasing the risk of harm to J.D.L. and others.

WHEREFORE, Plaintiff prays for judgment against Defendants Rolling Hills and Arcadia in an amount in excess of \$75,000.00, for damages; and for exemplary and punitive damages against such Defendants in an amount in excess of \$75,000.00 to deter such Defendants

from committing such reckless and/or malicious acts in the future and to apprise the public at large that society does not condone such acts.

(Defendant DHS: Negligence)

37) Plaintiff incorporates the allegations set forth in paragraphs 1 through 36, as if herein fully set forth.

38) Defendant DHS has a duty to exercise ordinary care to protect and provide for the children in its custody.

39) Upon information and belief, Defendant DHS knew or should have known about the dangerous conditions in the Cypress Adolescent Group Home, were aware of J.D.L.'s vulnerability to such dangers, and increased J.D.L.'s vulnerability by failing to correct, monitor, or supervise the dangerous conditions and/or environment.

40) J.D.L., a disabled minor child, was entirely dependent on, and under the complete control of, Defendant DHS, at all times relevant herein.

41) That Defendant DHS made periodic written reports to the juvenile Court in Pontotoc County, Oklahoma regarding J.D.L.'s condition and welfare between June 9, 2014 and July 31, 2015.

42) That despite actual knowledge of the sexual assaults at the Cypress Adolescent Group Home, and the harm to J.D.L., Defendant DHS actively concealed this information from the juvenile court, and excluded this information from the reports to the court, the attorneys appointed for J.D.L. and others involved in the juvenile case.

43) Upon information and belief, Defendant DHS with full knowledge of the sexual assaults committed upon J.D.L. described herein, engaged in affirmative acts of concealment to exclude suspicion, to preclude outside inquiry, and to induce those responsible for enforcing the

rights of J.D.L. to refrain from investigating, and from timely bringing an action against Defendant DHS.

44) Upon information and belief, four (4) minor male children, including J.D.L. were sexually assaulted by [REDACTED] at the Cypress Adolescent Group Home, between August 1, 2014 and July 31, 2015

45) Upon information and belief, Defendant DHS actively concealed or engaged in fraudulent or misleading conduct with respect to claims related thereto, and misled, deceived or provided false information to those persons charged with protecting J.D.L. and his rights.

46) No legitimate state interest is advanced by the state avoiding any potential liability through deceptive actions, further, there exists a legitimate state interest in not rewarding potentially wrongful government conduct and avoiding liability in tort.

47) That Defendant DHS should therefore be barred from asserting the defense of the one (1) year time limitation, under the GTCA, to exclude sexual assaults upon J.D.L. that occurred on or after November 1, 2014 and prior to February 11, 2015.

48) Upon information and belief, Defendant DHS had actual knowledge of the prior acts of sexual assault by [REDACTED], who later assaulted J.D.L., and failed to exercise ordinary or slight care to protect the residents of the Cypress Adolescent Group Home in DHS custody, including J.D.L. from subsequent assaults.

49) That the sexual assaults were not known to any person who could have preserved J.D.L.'s tort claims against Defendant DHS, and could not have been independently discovered by such parties until June 23, 2015.

50) DHS knew, or should have known, of Defendants Rolling Hills and Arcadia's inadequate supervision of DHS children and of the increasingly dangerous conditions at the

subject facility. With want of ordinary or slight care to those prevent dangers to J.D.L.'s health and safety, DHS failed to remedy the dangerous circumstances and/or deficiencies in the Cypress Adolescent Group Home operated by Defendants Rolling Hills and Arcadia, putting J.D.L. at substantial risk of serious, immediate, and proximate harm, and resulting in him being repeatedly sexually assaulted.

51) On information and belief, DHS knew, or should have known, that the acts and omissions of Defendants Rolling Hills and Arcadia created a danger to J.D.L.'s health, safety, and well-being, resulting in J.D.L., and others, being repeatedly sexually assaulted.

52) DHS failed to take action to ensure J.D.L.'s reasonable care and safety while in DHS custody, or failed to exercise ordinary or slight care to protect J.D.L.'s health and safety from known dangers, and further Defendant DHS knew or should have known that the Rolling Hills/Arcadia group home environment was dangerous. While not derelict in its placement of J.D.L., DHS owed a duty to J.D.L. of ordinary care and to take reasonable measures to protect his safety and wellbeing while in DHS custody and in the Cypress Adolescent Group Home.

53) DHS breached their duty to provide for J.D.L.'s safety and wellbeing, and to correct any dangerous conditions, and such breach was a proximate and direct cause of J.D.L.'s injury and damages.

54) As a result of DHS's acts and omissions, J.D.L. endured repeated physical and sexual assaults, physical pain, suffering, and mental pain and anguish, while under the custody and control of DHS.

55) While in DHS custody and in residence at the Cypress Adolescent Group Home, J.D.L. was repeatedly sexually assaulted, was repeatedly exposed to neglect-threat of harm,

suffered actual physical abuse, suffered substance abuse/over medication, and suffered educational neglect.

56) Defendant DHS failed to provide a safe environment for J.D.L., failed to enforce or follow its own safety policies and procedures, failed to properly educate, train, supervise, or inspect those made responsible for his care, and failed to monitor or protect this minor child in their custody. In so doing, Defendant DHS caused or contributed to the denial or deprivation of J.D.L.'s basic human rights, and wrongly caused or contributed to serious physical, emotional, and developmental damages to J.D.L.

WHEREFORE, Plaintiff prays for judgment against Defendant DHS in an amount in excess of \$75,000.00, for physical pain, suffering, mental pain and anguish, future medical expenses, and any such other and further relief as the Court may, in law or in equity, deem reasonable and proper.

**(DHS Defendants: OGTC/Respondeat Superior via
DHS Defendants)**

57) Plaintiff incorporates the allegations set forth in paragraphs 1 through 56 as if fully set forth herein.

58) DHS owed J.D.L. a non-delegable duty of due care, to take reasonable measures, and to exercise ordinary care to protect J.D.L.'s safety and well-being while in DHS custody.

59) DHS employees, acting in the scope of their employment, breached their duty, and such breach was a proximate and direct cause of J.D.L.'s injuries and damages. DHS's employees', servants' and agents' acts and omissions were negligent or done with a want of ordinary or slight care, knowing that their conduct or refusal to act would, more likely than not, cause serious injury and harm to J.D.L.

60) Defendant DHS is liable for the acts and omissions of its employees, under the doctrine of *respondeat superior*.

61) As a result of DHS's negligence, J.D.L. endured physical pain, suffering, mental pain, and anguish.

WHEREFORE, Plaintiff prays for judgment against Defendant DHS in an amount in excess of \$75,000.00, for physical pain, suffering, mental pain and anguish, future medical expenses, and any such other and further relief as the Court may, in law or in equity, deem reasonable and proper.

(Rolling Hills /Arcadia)

62) Plaintiff incorporates the allegations set forth in paragraphs 1 through 61 as if fully set forth herein.

63) On information and belief, Defendants Rolling Hills and Arcadia were aware of their contractual and statutory obligation to care for J.D.L.'s safety and wellbeing. Further, said Defendants were aware of, J.D.L.'s particular vulnerabilities as a disabled minor child, the risk posed by resident [REDACTED], [REDACTED]'s history of reported sexual assaults, and of the dangerous environment their lack of supervision and/or lack of basic protections created for J.D.L.

64) Defendants Rolling Hills and Arcadia acted with deliberate indifference to J.D.L.'s needs, in want of even the slightest care and diligence, without regard to the consequences of their neglect to J.D.L., and in reckless disregard for J.D.L.'s health, safety, and welfare, all of which resulted in J.D.L.'s damages and injuries.

65) Defendants Rolling Hills and Arcadia owed J.D.L. a duty of due care and to take reasonable measures for his health, safety, and wellbeing while under their care. Further,

Defendants Rolling Hills and Arcadia knew, or were aware, that their failure to supervise resident [REDACTED] was not safe for J.D.L., and through indifference, the want of slightest care, and lack of supervision, allowed J.D.L. to be physically injured, and sexually assaulted.

66) Defendants Rolling Hills and Arcadia breached their duty and such breach was a proximate and direct cause of J.D.L.'s injuries and damages.

67) Defendants Rolling Hills and Arcadia further undertook intentional acts that made the group home less safe, and facilitated further attacks against its residents, in an effort to conceal the acts described herein.

68) As a result of Defendants Rolling Hills and Arcadia's acts and omissions, J.D.L. endured physical pain, suffering, mental pain, anguish, humiliation, and embarrassment.

WHEREFORE, Plaintiff prays for judgment against Defendants Rolling Hills and Arcadia in an amount in excess of \$75,000.00, for physical pain, suffering, mental pain and anguish, humiliation and embarrassment, future medical expenses, plus pre-judgment and post-judgment interest, and costs, including reasonable attorneys fees; and exemplary and punitive damages against such Defendants in an amount in excess of \$75,000.00 to deter such Defendants from committing such reckless and/or malicious acts in the future and to apprise the public at large that society does not condone such acts.

(Defendants Rolling Hills And Arcadia)

69) Plaintiff incorporates the allegations set forth in paragraphs 1 through 68 as if fully set forth herein.

70) As an entity under contract with DHS, Defendants Rolling Hills and Arcadia owed J.D.L. a duty of due care and to take reasonable measures for his health, safety, and wellbeing while under their care.

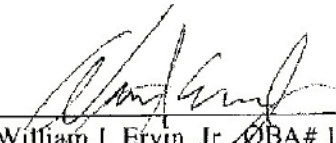
71) Defendants Rolling Hills and Arcadia breached their duty and such breach was a proximate and direct cause of J.D.L.'s injuries and damages.

72) As a result of Defendants' negligence, J.D.L. endured denial of necessary medical treatment, sexual assault, physical pain, suffering, mental pain, anguish, and humiliation.

WHEREFORE, Plaintiff prays for judgment against Defendants Rolling Hills Hospital, L.L.C. and Arcadia Healthcare Company, Inc. in an amount in excess of \$75,000.00, for physical pain, suffering, mental pain and anguish, medical expenses, plus pre-judgment and post-judgment interest, and costs, including reasonable attorneys fees; and any such other and further relief as the Court may, in law or in equity, deem reasonable and proper.

Respectfully Submitted,

By:


William J. Ervin, Jr., OBA# 16831
Ervin & Ervin, Attorneys at Law, L.L.P.
P.O. Box 1449
McAlester, OK 74501-1449
(918) 423-4242 (Phone)
(918) 423-4243 (Fax)
ervinjoe@sbcglobal.net

Attorneys for Plaintiff

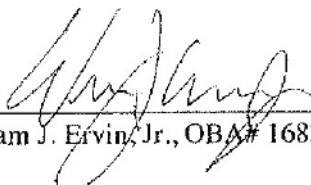
ATTORNEY'S LIEN CLAIMED
JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Second Amended Petition was on December 27, 2017 X mailed, _____ faxed, _____ hand-delivered, _____ e-mailed to the following:

John K. F. Langford
Assistant General Counsel
Department of Human Services
P.O. Box 25352
Oklahoma City, OK 73125-0352
John.Langford@okdhs.org
Attorney for Defendant ODHS

D. Bowen Berry
Mary Anny Waldon
Mitzy G. Fryer
Sheila G. Wilson
The Berry Law Firm, P.L.L.C.
400 N. Walker Avenue, Suite 100
Oklahoma City, OK 73102
berry@berryfirm.com
waldon@berryfirm.com
fryer@berryfirm.com
wilson@berryfirm.com
Attorneys for Defendants Rolling Hills and Arcadia



William J. Ervin, Jr., OBA# 16831